

1 Mark R. Vermeulen [CSBN 115381]
2 Law Office of Mark R. Vermeulen
3 755 Florida Street #4
4 San Francisco, CA 94110.2044
5 Phone: 415.824.7533
6 Fax: 415.824.4833

7 Lawrence E. Biegel [CSBN 44426]
8 Joseph A. Cisneros [CSBN 184907]
9 The Biegel Law Firm
10 2801 Monterey-Salinas Hwy., Suite A
11 Monterey, CA 93940
12 Phone: 831.373.3700
13 Fax: 831.373.3780

14 Attorneys for Defendant
15 NANCY BLACK

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

18 UNITED STATES OF AMERICA,) No. CR-12-0002 EJD
19 Plaintiff,)
20 v.) **DEFENDANT NANCY BLACK’S**
21) **MEMORANDUM RE: INITIAL**
22) **APPEARANCE AND CONDITIONS OF**
23) **RELEASE**
24 NANCY BLACK,)
25 Defendant.)
26 Date: February 2, 2012
27 Time: 1:30 p.m.
28 Courtroom: Hon. Howard R. Lloyd
29

30 Defendant Nancy Black, through counsel, provides the following memorandum in connection with her initial appearance. The purpose of this memorandum is to provide the Court with basic background information regarding Ms. Black and this case, which has been the subject of discussions between her counsel and counsel for the Government (based in Washington, D.C.) since November, 2006.

In light of the information in this memorandum and any additional information that may be provided by Pretrial Services, counsel respectfully requests that the Court order that Ms. Black remain released based on her promise to appear at all further proceedings without requiring a bond.

Nancy Black's Personal Information

Nancy Black has lived in the Monterey area since 1986. Her mother, who is 88 years old and lives in a nursing home near Nancy, relies heavily on Nancy for emotional support and practical support (including Nancy's feeding her mother twice daily).¹ Nancy has owned her home in Pacific Grove since 2005, where she resides with a number of pets for whom she cares: 3 dogs (including an elderly dog needing daily care), 2 cats, 3 lizards, and 4 parakeets.

Ms. Black is a marine biologist, having obtained a Master's of Marine Science degree from Moss Landing Marine Laboratories. She has researched whales and dolphins in the region for over two decades and has developed an expertise in the biology of killer whales off the California coast. Through the years she has been involved in numerous research and education projects and programs, including aerial surveys of marine mammals off California with Cascadia Research and field research on Alaskan killer whales with the National Marine Mammal Lab, the latter being a branch of the National Oceanographic and Atmospheric Administration ("NOAA"). Ms. Black and co-researchers have compiled a catalog of individual killer whales from the California and Mexico regions for the National Marine Fisheries Service and she has been involved in the photo-identification of killer whales, documenting their behavior in Monterey Bay. She also is a member of numerous scientific organizations involved in the study of whales and marine life.

Ms. Black owns and operates Monterey Bay Whale Watch, a business she founded in 1992. *See* <http://www.gowhales.com/trips.htm>. She, along with Richard Ternullo, another marine mammal scientist, co-own and operate Monterey Bay Boat Charters, which has been in business since 2003.²

The Charges, And The Parties' Long-Standing Discussions

Ms. Black appears before the Court pursuant to a summons arranged through counsel for the parties and through the courtesy of counsel for the Government. The charges arise from events that occurred in 2004-2005. The *Indictment* alleges violations of 18 U.S.C. § 1519 (alteration of a record with the intent to impede, obstruct and influence an investigation), 18 U.S.C. § 1001(a)(2) (knowingly and willfully making a material false statement in a matter), and with two misdemeanor counts in violation of 16 U.S.C. § 1375(b) and 50 C.F.R. §§ 216.3 & 216.11(b) (feeding and attempting to feed a

¹ Nancy's father passed away in 2011. Nancy is their only child.

² Mr. Ternullo has a degree in biology, is a seasoned naturalist, and has served as president of the Monterey Bay Chapter of the American Cetacean Society, a non-profit group dedicated to protecting whales and dolphins through conservation, research and education. He has been leading natural history trips for over 25 years.

1 marine mammal in violation of the Marine Mammal Protection Act (“MMPA”)). A forfeiture allegation
 2 also is alleged under 16 U.S.C. §§ 1377(d), 1377(e)(3)(B) and 28 U.S.C. § 2461(c) (seeking forfeiture of
 3 a 22-foot dinghy and its gear).

4 Count One (18 U.S.C. § 1519 (alteration of a record with the intent to impede an investigation))
 5 stems from an inquiry that Ms. Black herself initiated in 2005 to the local NOAA enforcement office
 6 regarding activity on whale watching boats in Monterey Bay involving an encounter with a friendly
 7 humpback whale.³ After initiating the inquiry, Ms. Black provided a copy of a video recording that had
 8 been made on her boat. The Government contends that the video recording she provided was altered
 9 within the meaning of 18 U.S.C. § 1519. The defense contends otherwise. Count Two (18 U.S.C. §
 10 1001 (false statement)) involves further discussions that Ms. Black had with NOAA in connection with
 11 her 2005 inquiry and the video recording. The Government contends that Ms. Black stated that the
 12 video recording she provided was the original recording, and the Government contends that the
 13 recording had in fact been altered. The defense contends otherwise. Counts Three and Four (16 U.S.C.
 14 § 1375(b) (“feeding” a marine mammal)) involves allegations that in 2004 and 2005, Ms. Black fed and
 15 attempted to feed a killer whale. These counts concern events distinct from Counts One and Two.
 16 These latter counts stem from Ms. Black’s observations of the natural phenomenon of killer whales
 17 feeding off of free-floating pieces of gray whale blubber in the Monterey Bay. The Government
 18 contends that by her handling of these pieces of blubber, she “fed” the whales in violation of the
 19 MMPA. The defense contends otherwise.

20 As noted above, Ms. Black and her counsel have been involved in discussions with counsel for
 21 the Government since 2006. A number of those meetings and discussions involved the personal
 22 presence of Ms. Black, a NOAA investigator, and the prosecutor, who had flown to Monterey from his
 23 office in Washington, D.C. In each of these meetings in which Ms. Black participated, she did so
 24 willingly and voluntarily.

25 In late 2011, the parties determined that a resolution was not within reach. The Government
 26 indicted on January 4, 2012, with the parties agreeing that Ms. Black would appear through a summons
 27 on February 2, 2012.

28 ///

29 ///

30 ³ “Friendly” or “curious” whale behavior refers to whales at the surface of the water approaching
 and/or staying near boats at sea.

Conclusion

In light of Ms. Black's personal situation, and in light of the history of this matter and the charges in this case, counsel respectfully requests that Ms. Black remain released based on her promise to appear at all further proceedings without requiring a bond.

Dated: February 1, 2012

Mark R. Vermeulen
Lawrence E. Biegel
Joseph A. Cisneros

Attorneys for Defendant
NANCY BLACK

By: /S/
Mark R. Vermeulen

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30